
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Year 2000 Biennial Regulatory Review –)
Amendment of Part 22 of the Commission’s) WT Docket No. 01-108
Rules to Modify or Eliminate Outdated Rules)
Affecting the Cellular Radiotelephone Service)
and other Commercial Mobile Radio Services)

To: The Commission

REPLY COMMENTS

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SUMMARY

Cingular and other cellular carriers urge the Commission to eliminate the mandatory analog service requirement and related FCC rules. A transition period is simply unnecessary because market forces are the best mechanism for dictating the pace at which cellular carriers convert to all-digital networks. Elimination of the analog requirement will not prohibit the continued provision of analog service. In fact, removal of this requirement will only encourage more digital deployment, which will ultimately benefit all consumers, as well as ensure regulatory parity among all CMRS providers.

With regard to the hearing impaired community, which presently uses analog networks to support the use of hearing aids and TTY devices, technology should be in place to permit use of these devices with digital networks prior to any conversion to all-digital systems. Rural carriers, who are concerned about the potential impact on roamers, face such problems only because they have not deployed digital technology rapidly enough in their own systems. Other carriers should not be responsible for the investment decisions of others, especially when doing so perpetuates the competitive disadvantage of having to maintain analog service. Cellular carriers also should not be obligated to support the needs of telematics vendors who have chosen to use analog technology. Market forces, as well as existing contractual relationships, will ensure that both roaming and telematics services are supported as long as necessary.

With regard to the remaining streamlining proposals, most commenters were in agreement with Cingular that these rule changes should be adopted. The FCC should eliminate the vertical wave polarization requirement. The Commission should reject the one objection to this rule change, which was based on a purely private interest that is more than outweighed by the overall public interest benefits of removing this requirement. Other rule proposals that received substantial support and should be adopted include elimination of the electronic serial number rule, removal of the system identification number (“SID”) from cellular licenses and the need to report SID changes, and other minor, conforming rule changes. With respect to the proposed out-of-band emissions limits, Cingular and others supported the concept, but noted problems that would require modification of the proposal.

Finally, some other carriers, including Cingular, recommended changes to the current unserved area rules. Because these comments further the goals of updating the unserved area rules to better reflect the current state of the cellular industry and to achieve greater regulatory parity with other CMRS providers, the Commission should adopt the proposed changes.

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REPLY COMMENTS

Cingular Wireless LLC (“Cingular”) hereby replies to comments filed in response to the above-captioned *Notice of Proposed Rulemaking* (“*Notice*”).¹ In its comments, Cingular supported many of the streamlining measures proposed in the *Notice*. In addition, Cingular recommended rule changes intended to update the cellular unserved area rules. While many commenters agree with Cingular that the FCC should remove the mandatory analog requirement, Cingular reiterates that the Commission should allow market forces to dictate the transition to digital rather than establishing an arbitrary deadline. With a few noted exceptions, many commenters also support a number of the proposed rule changes, consistent with Cingular’s initial comments.

¹*Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, WT Docket No. 01-108, *Notice of Proposed Rulemaking*, FCC 01-153 (rel. May 17, 2001).

DISCUSSION

I. MANY COMMENTERS AGREE THAT THE COMMISSION SHOULD REMOVE THE MANDATORY ANALOG SERVICE REQUIREMENT

A. Market Forces, Rather Than An Arbitrary Timeframe, Should Dictate The Pace Of The Transition To Digital

In its comments, Cingular proposed that the Commission eliminate the mandatory analog service requirement and allow the marketplace to dictate the pace at which cellular carriers transition their networks to digital.² Many commenters supported elimination of the analog requirement, although there were differences of opinion as to the timing of removing this requirement. At least one major carrier agreed with Cingular that the requirement should be removed immediately,³ while others proposed a transition period.⁴

Commenters, including Cingular, noted that analog technology is less spectrally efficient than digital.⁵ Thus, cellular licensees are placed at a competitive disadvantage as compared with other CMRS carriers because the mandatory analog service requirement only applies to cellular carriers.⁶

² See Comments of Cingular at 6.

³ See Comments of AT&T Wireless Services, Inc. (“AT&T”) at 2-3.

⁴ See Comments of Sprint PCS at 2 (five years); Comments of CTIA at 9 (unspecified transition period); Comments of Qwest Wireless, L.L.C. at 2 (five years); Comments of United States Cellular Corporation (“US Cellular”) at 3-4 (unspecified transition period); Comments of Verizon Wireless at 8 (five years); Comments of Rural Telecommunications Group (“RTG”) at 3 (five years).

⁵ See Comments of Sprint PCS at 2 (analog AMPS systems are less spectrally efficient than 2G and 3G digital air interfaces); Comments of AT&T at 3 (digital service uses significantly less bandwidth than analog and it brings consumers a vast array of new services and enhancements); Comments of US Cellular at 3 (digital service enables carriers to carry many more conversations and transmit more data on the channels allocated to cellular systems than analog systems are able to do).

⁶ See Comments of Cingular at 4-5.

A mandatory transition period for the conversion of cellular analog systems to digital is unnecessary and violative of regulatory parity principles. A number of parties recommended a transition period to protect certain services and groups of individuals that are dependent on the availability of analog service. Cellular carriers should not be required to bear this burden while their competitors deploy completely digital networks. Market forces, not regulation, will best ensure that analog subscribers will be properly and adequately accommodated by digital services at a pace guided by commercial, contractual, and public relations factors.⁷

B. The Concerns Of Those Opposed To Elimination Are Best Addressed By Operation Of Market Forces

1. The Hearing Impaired Community

The hearing impaired community noted that digital technology is not compatible with TTY devices and hearing aids, and that elimination of the analog requirement would impair access to telecommunication services by hearing-impaired individuals.⁸ At the same time, advocates for the hearing-impaired expressed a preference for access to digital services, and thus support development of digital technologies that provide reliable service to hearing impaired persons.⁹ Cingular believes that the hearing impaired will not be adversely impacted by elimination of the mandatory analog requirement.

⁷ See Comments of Ericsson at 5 (the market, not regulators, will drive the continued availability and enhancement of analog services); Comments of AT&T at 4 (by removing the analog requirement . . . the Commission would allow market considerations, not artificially imposed regulatory schedules, to shape the emerging wireless marketplace).

⁸ See, e.g., Comments of Alexander Graham Bell Association for the Deaf and Hard of Hearing (“AG Bell”) at 2; Comments of Council of Organizational Representatives at 1.

⁹ See Comments of National Association for the Deaf at 3-4; Comments of Self Help for Hard of Hearing People at 2-3, 8; Comments of Telecommunications for the Deaf, Inc. at 3; Comments of AG Bell at 2 (deaf and hard of hearing consumers are eager to join the digital market and take advantage of the improved services and lower costs related to digital wireless technology).

TTY technologies are expected to become compatible with digital networks long before a market-based transition from analog to digital would occur.¹⁰ With respect to hearing aids, Cingular proposed that the FCC encourage manufacturers of wireless handsets to work cooperatively with hearing aid manufacturers to address compatibility issues.¹¹ With the combined efforts of the manufacturing industry and the Commission, advanced digital wireless services should be available to hearing impaired individuals prior to conversion of cellular analog systems to digital, thereby negating any concerns that hearing impaired individuals will not have continued access to wireless telecommunications services.

2. Rural Carriers

Parties representing rural carrier interests believe the analog requirement should be retained in order to ensure that roamers are able to continue obtaining service, whether the roamer is an analog rural customer entering digital markets, or a customer of a digital network who enters an analog system.¹² However, the rural carriers fail to mention that it is a carrier's own decision on whether to invest in digital technology that creates the roaming problems they envision. Furthermore, the rural carriers are essentially asking that because of their failure to upgrade to digital, other cellular carriers must continue to be competitively disadvantaged by the

¹⁰ Comments of Cingular at 8. As the Telecommunications Industry Association ("TIA") noted, "the wireless industry has made great strides in developing standards for each digital air interface that are backward compatible with Baudot code TTY devices. TIA expects that, with few exceptions, the remaining issues will be resolved and service providers will have the necessary equipment upgrades available to deploy in their networks in order for them to be TTY compatible by June 30, 2002, the Commission's deadline by which digital wireless service providers must transmit 911 calls made from TTY devices." Comments of TIA at 4.

¹¹ Comments of Cingular at 9.

¹² See Comments of Bristol Bay Cellular Partnership at 3; Comments of CenturyTel Wireless, Inc. ("CenturyTel") at 3-4; Comments of Mid-Missouri Cellular ("Mid-Missouri") at 4-8, 10-11; Comments of Rural Cellular Association at 7-8; RTG at 4; Comments of Wireless Consumers Alliance ("WCA") at 4.

analog requirement. Carriers should be free to maintain analog networks, but their decision should not impair the ability of other carriers to fully deploy state-of-the-art digital technology.

Adoption of Cingular's position that market forces should govern the timing of analog conversion to digital will ensure the continued accessibility of wireless networks by rural analog customers. Clearly, a cellular carrier's decision to convert completely to digital will be influenced by the service needs of its existing analog customers, as well as customers who may need to roam on analog channels. Other factors, including the availability of dual mode and tri-mode handsets, increasing digital coverage to more areas of the country, and changing consumer preferences for regional and nationwide interoperability will also influence the pace of conversion to digital. The correct solution, therefore, is to remove the analog requirement and allow market forces to operate unfettered by artificial, regulatory mandate.

3. Telematics Vendors

Vendors of some telematics systems state that elimination of the cellular analog requirement will unfairly and detrimentally affect entities that have committed investments based on the analog standard.¹³ At the same time, many of these companies, similar to the hearing aid community, would prefer to use digital technology.¹⁴ Telematics suppliers cite to the fact that digital service is not ubiquitous, and express concern that removal of the mandatory analog requirement would result in the abandonment of analog-based tracking services for vehicles and other pieces of equipment.¹⁵

¹³ See Comments of Deere & Company ("Deere") at 9; Comments of OnStar Corporation ("OnStar") at 9; Comments of ATX Technologies, Inc. ("ATX") at 2, 12-13; Comments of CaseNewHolland Inc. at 3-4.

¹⁴ See Comments of ATX Technologies, Inc. at 16 (ATX wholeheartedly seeks a digital solution); Comments of OnStar at 8 (exploring digital designs and options).

¹⁵ See Comments of Deere at 1-2, 6-8; Comments of OnStar at 8-9; Comments of ATX at 2, 13-15; Comments of CaseNewHolland at 4-5.

These arguments are flawed in the same manner as those proffered by rural carriers. The telematics community desires to unnecessarily hamstring cellular carriers by requiring them to devote limited spectrum resources to an outmoded technology. While Cingular understands their concern regarding ubiquitous service, it is patently unfair and not in the public interest for cellular carriers to be required to maintain analog through the life-span of these systems.¹⁶ Again, cellular carriers, and their customers, would be penalized for investment decisions of others. Moreover, cellular carriers would not immediately convert to digital and abandon customers dependent on analog technology. Quite the contrary, carriers will need to continue to operate under existing service contracts, and will be influenced by market pressures to provide analog service to such customers through a market-based transition period. Thus, market forces are the best solution for addressing the particular concerns that are being raised in this rule making.

4. Analog Subscribers Will Not Be Harmed By Elimination Of The Analog Requirement

Elimination of the rule will not prohibit the provision of analog service. If market forces continue to demonstrate demand for analog service, it will remain available. Removal of the cellular analog requirement would simply allow carriers flexibility, in a timeframe consistent with market-based factors, to convert networks fully to digital. By so doing, the Commission will not create an automatic abandonment of analog customers, but rather will permit cellular companies a fair opportunity to compete with other CMRS carriers on a more even playing field. Placing cellular carriers on equal footing with other CMRS providers will only lead to more robust competition, ultimately benefiting all customers. Furthermore, the public would benefit

¹⁶ See Comments of CaseNewHolland at 4.

from the increased ability of cellular companies to make advanced digital services more widely available due to the spectrum efficiency gains obtained from converting to all-digital networks.

Further, it appears that all of the above-interested parties, if given the choice, would prefer to use digital technology. Removal of the mandatory analog requirement would actually encourage deployment of digital systems by all service providers – including cellular providers in both urban and rural markets, and PCS companies who have not yet deployed their digital systems in less populated areas.¹⁷ Thus, it is in the best interest of all concerned to support measures that will assist cellular carriers to convert to digital rather than unfairly and detrimentally burdening such carriers with an unnecessary analog requirement.¹⁸

C. Commenters Supporting Elimination Of The Analog Service Requirement Also Support Elimination Of Related Rules

In the *Notice*, the Commission proposed to eliminate a number of rules that relate to the analog service requirement. Commenters who supported elimination of the analog service requirement generally supported revision of these related rules,¹⁹ while commenters who opposed the elimination of the analog service requirement generally opposed or did not comment

¹⁷ See Comments of Cingular at 4. See also Comments of AT&T at 3 (many cellular carriers are not pursuing the conversion to digital technologies as aggressively as they should as a result of the continued analog requirement).

¹⁸ One commenter, the Independent Cellular Services Association, recognized that the continuing mandatory analog requirement is indeed a burden to cellular carriers, and in fact suggested that as a result “it may be fair to allow some removal of spectrum caps” to offset this burden. Comments of the Independent Cellular Services Association at 7. Sprint PCS agrees, arguing that “[t]o help ensure that cellular carriers are not penalized by the temporary AMPS obligation, and to address capacity constraint concerns, Sprint PCS recommends that each cellular carrier be given an “AMPS credit” against the spectrum cap [equivalent to 10 MHz of spectrum].” Comments of Sprint PCS at 12. (There are many independent, and more compelling, reasons for eliminating the spectrum cap in its entirety. See Comments and Reply Comments of Cingular in WT Docket No. 01-14 (filed Apr. 13, 2001 and May 14, 2001, respectively)).

¹⁹ See, e.g., Comments of AT&T at 1; Comments of CTIA at 4-6, 14-15; Comments of Ericsson at 3-7; Comments of Western Wireless Corporation (“Western Wireless”) at 10-12. Verizon

on the proposed revisions to the related rules.²⁰ Cingular supports the elimination of the analog service requirement and the Commission's proposals to delete the following:

- Section 22.901(d), which addresses alternative cellular technologies (this section would be replaced with a technology-neutral introductory paragraph);
- Section 22.901(a), which requires licensees to inform prospective subscribers of their reliable service area;
- Section 22.901(b), which requires licensees to notify the Commission if a subscriber's request for service is denied because of insufficient capacity;
- The first sentence in the introductory paragraph of Section 22.901, which requires licensees to provide service to all cellular subscribers in good standing;
- The channelization plan contained in Section 22.905; and
- The requirement that cellular systems have the capability to provide service using the modulation types described in OET 53.

All of these rules support the analog service requirement and will become unnecessary if this requirement is eliminated.

II. COMMENTERS LARGELY SUPPORT OTHER COMMISSION PROPOSALS

A. Commenters Agree That The FCC's Proposed Out-Of-Band Emission Rules Should Not Be Adopted

In its Comments, Cingular expressed support for increased flexibility in the out-of-band emission rules, but strongly disagreed with the Commission's specific proposals.²¹ Cingular is concerned that the proposed rule changes would actually result in stricter limits, and may not even be attainable with certain digital technologies. Other commenters recognized similar problems with the proposed out-of-band emission limits.²² Each of these comments has merit

suggests waiting to eliminate some of these rules until after a transition period. *See* Comments of Verizon at 15-17, 19, 21.

²⁰ *See, e.g.*, Comments of CenturyTel at 3; Comments of Mid-Missouri at 12; Comments of WCA at 5.

²¹ Comments of Cingular at 10-14.

²² *See* Comments of Ericsson at 7-11; Comments of QUALCOMM at 6-8; Comments of TIA at 6-10.

and therefore the Commission should take into consideration these other positions, in addition to Cingular's own position.

B. Most Support Elimination Of The Vertical Wave Polarization Requirement

Cingular continues to support the Commission's proposal to amend Section 22.367(a)(4) to permit any type of polarization.²³ Such a rule change would lead to more efficient, aesthetically desirable, and economical antenna installations. Further, PCS and SMR carriers are permitted to use any type of wave polarization with no resulting co-channel and adjacent channel interference. Not surprisingly then, a significant number of other commenters also supported this rule change.²⁴ Two parties, however, opposed this beneficial proposal: US Cellular and OnStar.

US Cellular argues that removal of the vertical polarization requirement will lead to decreased signal isolation and to increased interference to cellular systems, yet provides no evidence.²⁵ However, it appears that US Cellular is primarily concerned with the potential impact of this rule change on its partnership with AirCell.²⁶ Such private interests should not drive the continuation of engineering rules that are not serving the public interest or carriers in general. The potential benefits from elimination of the vertical polarization requirement to the vast majority of cellular carriers, who are not in partnership with AirCell, clearly outweigh the interest of those relatively few cellular companies that support AirCell's operations.

²³ Comments of Cingular at 19.

²⁴ See Comments of AT&T at 1 (generally stating that AT&T strongly supports all proposals); Comments of CenturyTel at 6; Comments of CTIA at 15; Comments of Deltec at 1-2; Comments of Ericsson at 14-15; Comments of QUALCOMM at 5; Comments of TIA at 10; Comments of Verizon at 22-23; Comments of Western Wireless at 12-13.

²⁵ Comments of US Cellular at 5.

²⁶ *Id.* at 6 (removal of the vertical polarization standard "might affect" AirCell's operations).

Importantly, AirCell operates on a secondary basis.²⁷ Thus, AirCell's need to adjust its operations cannot overcome public interest factors favoring the elimination of the vertical polarization requirement for carriers who have primary status.

OnStar briefly addressed and dismissed, without elaboration, the proposal to eliminate the vertical wave polarization requirement, stating only that “[l]ocal market variation such as broadcast wave polarization sub-optimizes overall performance nationwide.”²⁸ In the absence of further explanation, the Commission should reject OnStar's position on this issue and remove the vertical polarization requirement for the reasons discussed above and in Cingular's original comments.

C. A Majority Support Elimination Of The Electronic Serial Number Rule

Cingular supported the Commission proposal to eliminate Section 22.919, which imposes specific design requirements relating to electronic serial numbers (“ESNs”) on manufacturers of cellular telephones.²⁹ As noted by the Commission, the sole purpose of this rule was to address the problem of cellular “cloning” fraud. A few commenters opposed elimination of this rule, citing the need for continued fraud protection and the importance of ESNs for billing functions.³⁰ The majority of commenters, however, agreed with Cingular that the ESN rule is no longer required given recent developments, and should be eliminated in order to provide licensees with the option to use new technologies that may provide superior fraud protection and billing information.³¹

²⁷ See *Aircell, Inc., Order*, 14 FCC Rcd 806, 811 (Acting Chief, Wireless Telecom. Bur. 1998).

²⁸ Comments of OnStar at 8.

²⁹ Comments of Cingular at 16-17.

³⁰ Comments of CenturyTel at 5; Comments of Verizon at 17-19.

³¹ Comments of AT&T at 1; Comments of CTIA at 12-14; Comments of Ericsson at 11-12; Comments of QUALCOMM at 3-5; Comments of TIA at 5-6.

D. Virtually All Agree That System Identification Numbers Should Not Remain Part Of Cellular Authorizations

The Commission proposed to revise Section 22.941 to remove system identification numbers (“SIDs”) as a term of cellular licenses, and to no longer require licensees to notify the Commission of SID changes. Virtually all commenters supported this proposal. In fact, Wireless Consumers Alliance, Inc. (“WCA”) was the only commenter who opposed the proposal, stating that it would “enable carriers to slice and dice their systems to provide service to customers over less than their assigned MSA or RSA.”³² WCA’s argument runs completely counter to the direction that the CMRS market is moving. Because intense competition has spurred carriers to offer service on a regional or national basis,³³ FCC-mandated protections are not necessary to ensure that carriers maximize their service areas. Thus, Cingular reiterates its support of the Commission’s proposal to revise Section 22.941.³⁴

E. Commenters Were Generally Unanimous In Support Of The Commission’s Remaining Proposals

The Commission has also proposed amending three minor rule provisions in order to conform them to changes that have already been made to other rules. Specifically, the Commission proposed to:

- modify Section 22.946 to correct and update the “Commencement of Service” table, and delete Section 22.946(b)’s prohibition on cellular licensees “intentionally serv[ing] only roamer stations;”
- modify Section 22.323, which imposes conditions on the provision of incidental services; and

³² Comments of WCA at 6.

³³ See, e.g., *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Sixth Report*, FCC 01-192 (rel. Jul 7, 2001) at 4-5 (“the process of carriers building nationwide footprints continues to be a significant trend in the mobile telephone sector.”).

³⁴ See Comments of Cingular at 20.

- delete Sections 22.937, 22.943 and 22.945, which contemplate the assignment of initial licenses by lottery rather than auction.

Commenters, including Cingular, were generally unanimous in support of these minor changes.³⁵ While agreeing with the proposed modifications to Section 22.323, however, several commenters urged the Commission to retain an express provision permitting cellular carriers to provide incidental services.³⁶ These commenters indicated that the rule is helpful in demonstrating that certain services are exempt from state and local regulations.³⁷ As already indicated in its initial comments, Cingular agrees that the FCC should retain an express provision relating to incidental services.

III. THE RECORD SUPPORTS SIGNIFICANT CHANGES TO THE CELLULAR UNSERVED AREA RULES

At the Commission's invitation to offer additional streamlining proposals, Cingular pointed out that as a result of significant changes in the cellular industry since its inception, the current unserved area procedures no longer serve a useful purpose and should be extensively streamlined.³⁸ For the most part, any unserved areas of value have already been licensed to cellular carriers, leaving a patchwork of irregularly shaped unclaimed areas. Accordingly, Cingular proposed a new regulatory scheme whereby remaining unserved area would automatically become part of the incumbent's CGSA, except for unserved areas of at least 50 square miles which would be subject to a one-time filing window and subsequent auction, if necessary. Cingular also suggested that for markets still within the five-year build-out period,

³⁵ See Comment of Cingular at 21-23; Comments of AT&T at 1; Comments of CTIA at 17-18; Comments of Verizon at 26-29; Comments of Western Wireless at 10, 14-15.

³⁶ See Comments of CenturyTel at 6; Comments of RTG at 6-10; Comments of Western Wireless at 14-15.

³⁷ See, e.g., Comments of Western Wireless at 15.

³⁸ Comments of Cingular at 23-25.

any CGSA expansions would no longer require a filing, and licensees would only have to report coverage at the end of the five-year period.

Western Wireless proposed a substantially similar plan for future licensing of unserved areas,³⁹ and Cingular therefore supports Western's proposal. In related comments, AT&T proposed that the FCC establish a rule that would automatically license unserved areas of less than 50 square miles, which are surrounded by the service area boundaries of a cellular licensee, without the need for filings.⁴⁰ There is indeed no reason to have to file for such areas when they can only be served by a single licensee.

Finally, Dobson Communications Corporation suggested that carriers be provided the option to modify their systems and create signal contours that cover unserved area, but which will be provided only secondary protection from interference and which will not become part of the CGSA unless the licensee expressly files for such area pursuant to the unserved area filing procedures.⁴¹ If the Commission adopts the proposals of Cingular and Western, Dobson's approach would become moot. However, Cingular would support Dobson's proposal as an alternative position in the event Cingular's preferred approach is not adopted.

³⁹ See Comments of Western Wireless at 6-8.

⁴⁰ See Comments of AT&T at 5.

⁴¹ See Comments of Dobson Communications Corporation at 4.

CONCLUSION

Based on the foregoing, Cingular recommends that the Commission revise its Part 22 rules as suggested herein and in its initial comments.

Respectfully submitted,

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